

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Specialty National Insurance Company,)	
)	
Plaintiff,)	
v.)	No. 07 CV 7507
)	
English Brothers Funeral Home,)	
)	
Defendant.)	

**PLAINTIFF'S ANSWERS TO DEFENDANT'S
AFFIRMATIVE DEFENSE AND COUNTERCLAIMS**

Plaintiff, Specialty National Insurance Company ("Specialty National"), by and through its undersigned counsel, and for its answers to Defendant's Affirmative Defenses and Counterclaims to Plaintiff's Complaint for Declaratory Judgment states as follows:

FIRST AFFIRMATIVE DEFENSE

Specialty National fails to state a claim upon which relief can be granted.

ANSWER: Specialty National denies the allegations as set forth in the First Affirmative Defense.

SECOND AFFIRMATIVE DEFENSE

Specialty National is precluded at law from raising its alleged defenses to coverage.

ANSWER: Specialty National denies the allegations as set forth in the Second Affirmative Defense.

THIRD AFFIRMATIVE DEFENSE

Specialty National has waived its alleged defenses to coverage.

ANSWER: Specialty National denies the allegations as set forth in the Third Affirmative Defense.

FOURTH AFFIRMATIVE DEFENSE

Specialty National is estopped from raising its alleged defenses to coverage.

ANSWER: Specialty National denies the allegations as set forth in the Fourth Affirmative Defense.

FIFTH AFFIRMATIVE DEFENSE

Specialty National has materially breached its policy by denying English Brothers a defense in all of the underlying actions because each of the underlying actions alleges claims that, if proven, would be covered under the policy. Specialty National has therefore deprived English Brothers of the “litigation insurance” to which English Brothers is entitled under the policy and New York law.

ANSWER: Specialty National denies each and every allegation as set forth in the Fifth Affirmative Defense.

SIXTH AFFIRMATIVE DEFENSE

By bringing this action seeking a declaration that it has no duty to defend English Brothers, Specialty National is anticipatorily breaching its policy by seeking to deny English Brothers a defense in each of the underlying actions. Specialty National’s intention to deprive English Brothers of the “litigation insurance” to which it is entitled under the policy and New York law entitles English Brothers to retain defense counsel of its own choosing at Specialty National’s expense.

ANSWER: Specialty National denies each and every allegation as set forth in the Sixth Affirmative Defense.

SEVENTH AFFIRMATIVE DEFENSE

Specialty National’s action is premature and unripe.

ANSWER: Specialty National denies the allegations as set forth in the Seventh Affirmative Defense.

FIRST COUNTERCLAIM

By bringing this action seeking a declaration that it has no duty to defend English Brothers, Specialty National, to prevail, must prove facts and allegations antithetical to English Brothers' interests in pending litigation. Specialty National is therefore placing its financial interests ahead of those of English Brothers in willful disregard of English Brothers' interests. Specialty National is therefore obligated to pay all of English Brothers' defense costs in the underlying action and any liability of English Brothers without regard to the limits of the policy.

ANSWER: Specialty National denies each and every allegation as set forth in the First Counterclaim.

SECOND COUNTERCLAIM

By hailing its insured into this action to litigate the issue of coverage, Specialty National must pay English Brothers' attorney's fees in this action.

ANSWER: Specialty National denies the allegations as set forth in the Second Counterclaim.

WHEREFORE, Plaintiff, Specialty National Insurance Company, prays that each and every Affirmative Defense and Counterclaim alleged by the Defendant be denied, and that this Honorable Court enter judgment in Specialty National's favor for the reasons set forth in Plaintiff's Complaint for Declaratory Judgment.

Date: December 31, 2007

Respectfully submitted,

/s/
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-and-

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